

M e m o r a n d u m**440.0056**

To: Mr. J. A. Najarian

Date: June 24, 1975

From: Gary J. Jugum

Subject: Manufacturing Aids

This is in response to our memorandum of April 11, 1975, which was addressed to Mr. T. P. Putnam. You have raised a number of questions concerning what position we should take with respect to allowing a "resale" of manufacturing and printing aids.

As you point out, STGB 50-24 covers only a manufacturer's purchase of fabrication of manufacturing or printing aids for immediate resale to his customer, who is the consumer of the aids. The bulletin states that when manufacturers purchase, or fabricate from raw materials purchased, manufacturing or printing aids for the account of customers who acquire title to the property upon delivery thereto, or upon the completion of the fabrication thereof by, the manufacturers, then tax will apply either to the sale to the manufacturer or to the sale by the manufacturer to the customer (but not to the sale of the manufacturer). The bulletin does not speak to the transaction whereby the customer of the manufacturer purports to acquire the manufacturing aids, as well as the manufactured product, for resale to his customer.

With respect to "special printing aids," however, Regulation 1541 states that, in an appropriate case, a customer of a printer may issue a resale certificate to the printer for "special printing aids," which the customer will resell prior to any use being made of the aid in the printing process. In the printing industry, we have allowed printing aids, of unique utility can usually be readily identified to the ultimate consumer.

In any event, you have outlined some of the typical transactions with which we are confronted:

- I. Special manufacturing aids (other than printing aids) of unique utility are sold by a manufacturer to customer A who will resell at least the product produced through the use of the special manufacturing aid to customer B. No information is available as to whether customer A will resell the special manufacturing aids to customer B prior to

use or how he will bill the job. Each of the following conditions require special analysis.

- (1) Specific resale certificate is given to the manufacturer stating that the special manufacturing aid is purchased by customer A for resale. Customer A is located in the state. Customer B is located in the state.

Sales of the special manufacturing aids are allowable as sales for resale since customer A issued a resale certificate for these items. If, however, the items were used for the benefit of A prior to A's sale of the items to B, then A would be liable for payment of use tax measured by its purchase price of the property.

- (2) Same as (1) except customer A is located outside the state and holds only seller's permit in the state of residence. Customer B is an instate firm.

The result here is the same as in (1). We have apparently made no distinction between resale certificates given by persons who are holders of California seller's permits and persons who do not hold such a permit even though Revenue and Taxation Code Section 6092 purports to protect only a person who takes such a certificate from a person who holds a California seller's permit.

- (3) Same as (1) except customer A is located instate but customer B is located outside the state.

Same result as in (1).

- (4) Same as (1). Both customers are located outside the state and neither holds a California's seller's permit.

Same result as in (1).

- (5) Same conditions as (1), (2), (3), and (4), except that a blanket resale certificate was issued by customer A [?] which refers to each purchase order for guidance as to the tax status on items being purchased. The purchase order calls for a manufactured product and also for tooling. It is merely marked "resale" without distinguishing between manufactured products and manufacturing aids.

Receipts from the sale of the manufacturing aids to customer A are subject to tax unless the manufacturer establishes in fact that A resold the special manufacturing aids prior to their use in the manufacturing process. The blanket resale certificate is ineffective for purposes of relieving the manufacturer from the burden of establishing that the sale of the manufacturing aid was not a sale at retail.

- II. Same as I [(1) to (5)] except that, rather than a manufacturing aid, special printing aids are involved.

The results are the same in cases (1) through (5). With respect to case (5), Regulation 1541 provides, in paragraph (e)(4), that "...the resale certificate must include a general or specific description of the printing aids to be purchased for resale." The printer can establish that the printing aid was in fact sold by him for resale if he can show that his customer (customer A in the example) "separately listed and priced" the properties on invoices rendered to the ultimate purchaser of the printing aid (customer B).

- III. Same as I [(1) to (5)] and II with the five conditions explained under I except that the manufacturing aid or printing aid is not of unique utility.

The results are the same in cases (1) through (5) except that, with respect to printing aids, in case (5) the presumption will not be available to establish customer A's sale of the printing aids to customer B as a sale prior to use. The strict standard established in the second paragraph of paragraph (e)(3) of Regulation 1541 will apply, and the printer, to avoid the sales tax, will be required to establish clearly that his customer (customer A) resold the printing aid prior to use.

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